IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MS SONAL M PATEL for Petitioner(s) : 1 - 2.
MR. P.D.BHATE, LEARNED AGP for Respondent(s) : 1 - 2.
UNSERVED-EXPIRED (N) for Respondent(s) : 3,
MR VIMAL M PATEL for Respondent(s) : 4 - 5.
MS MEGHA JANI for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality

and validity of the order passed by the Collector, Kutch dated 4.8.2003 passed in Appeal No.31/2003 in dismissing the said Appeal on the ground of limitation.

2. Heard Shri R.M.Vin, learned Senior Advocate with Ms. Sonal Patel, learned advocate on behalf of the petitioners, Shri Mihir Joshi, learned Senior Advocate with Shri Vimal Patel, learned advocate appearing for respondent Nos.4 and 5 and Shri P.D.Bhate, learned AGP on behalf of respondent Nos.1 and 2.

3. It appears from the record that the dispute is with regard to the land admeasuring 2-Acres and 22-Gunthas of land bearing old Survey No.898 situated at Bhuj. The predecessor in title of the land in question approached the Deputy Collector under Section 37(2) of the Bombay Revenue Code for determining the rights of the parties and the Deputy Collector, Bhuj after holding necessary inquiry, as required under Section 37 of the Act and after giving an opportunity to all the concerned parties, by order dated 31.7.2000 declared that the opponent No.2-Bakali Jusub alias Budha Umar as the owner of the land in question.

4.It appears from the record that being aggrieved and dissatisfied with the order passed by the Deputy Collector, Bhuj dated 31.7.2000, the petitioners preferred Special Civil Application No.3411 of 2002 before this Court and the said Special Civil Application came to be withdrawn by the learned advocate appearing on behalf of the petitioner as they wanted to avail alternative remedy of appeal with a request to condone the delay caused in filing the appeal before the Appellate Authority. The said order came to be passed on 8.7.2002. It appears that thereafter, the petitioners had preferred the Appeal before the Collector, Kutch-Bhuj by way of Appeal No.31/2003 which came to be dismissed on the ground of limitation as the said application was preferred after a period of 3 years. Being aggrieved and dissatisfied with the order passed by the Collector, Kutch-Bhuj dated 4.8.2004 in dismissing the said Appeal on the ground of limitation, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

5.Shri R.M.Vin, learned counsel appearing on behalf of the petitioners has vehemently submitted that the

Collector, Kutch-Bhuj has not considered the grounds mentioned in the application for condonation of delay and taking the liberal view the Collector ought to have condoned the delay and out to have decided and disposed of the appeal on merits. It is further submitted by him that in view of the fact that the petitioners preferred Special Civil Application No.3411/2002 before this Court, which came to be withdrawn by them with a view to avail the alternative remedy of appeal and thereafter, the Appeal came to be preferred, the Collector ought to have considered the same and ought to have condoned the delay and ought not to have dismissed the Appeal on technicalities and ought to have decided the same on merits.

6. Shri Mihir Joshi, learned Senior Counsel appearing on behalf of the respondent Nos.4 and 5 has while opposing the present Special Civil Application submitted that even the earlier Special Civil Application No.3411/2002 came to be withdrawn on 8.7.2002 with a view to prefer an Appeal before the appropriate forum, still the same came to be filed after a period of 10 months i.e. on 21.5.2003. It is also further submitted that so far as the Appeal preferred by the petitioners is concerned,

it is nothing but a harassment to a citizen as there is neither any title in favour of the petitioners, nor they are in a position to produce any acquisition proceedings and/or acquisition order by which it can be said that the land in question came to be acquired for the benefit of the petitioners. He has submitted that in fact, in the earlier Special Civil Application by order dated 3.5.2002, the Hon'ble Court wanted to satisfy itself with regard to any acquisition proceedings as alleged and/or contended by the petitioners and therefore, the learned advocates appearing on behalf of the petitioners took time but as they were not in a position to satisfy the Court on merits and produce the relevant notifications and/or record with regard to acquisition of the land in question and the learned advocates appearing on behalf of the petitioners withdrawn the aforesaid Special Civil Application with a liberty to file an Appeal. Therefore, it is requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties.

8.It is true that normally the question of delay is required to be considered liberally and the matters are to be decided on merits. It is also true that the Collector could have taken a liberal view in condoning the delay and deciding the appeal on merits. However, considering the facts and circumstances of the case, inspite of remanding the matter to the Collector for his decision afresh, this Court called upon the petitioners to satisfy this Court on merits and to produce any record available with them with regard to acquisition of the land in question. Shri R.M.Vin, learned counsel appearing on behalf of the petitioners has fairly conceded that they are not in a position to produce any record showing the acquisition of the land in question. In that view of the matter, the contention on behalf of the petitioner that the land in question came to be acquired for the benefit of the petitioners cannot be accepted in absence of any other documentary evidences on record. The Deputy Collector on appreciation of evidence in a proceedings under Section 37(2) of the Bombay Land Revenue Code and after holding necessary inquiry and giving opportunity to all the concerned parties, had specifically held that the concerned respondents are the owner of the land in

question. In view of the aforesaid facts and circumstances of the case, there is no substance in the present Special Civil Application and even on merits also, the petitioners have failed to establish their case as they do not have any documentary evidence to show that the land in question came to be acquired for the benefit of the petitioner. Hence, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

9.Notice discharged with no order as to costs.

(M.R.SHAH, J.)

kdc.